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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission
Automatic Sprinkler Appeals Board
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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket #: 2005-07
25 Mill Street
Springfield, MA.

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Springfield Fire Department, requiring the installation an adequate system of automatic sprinklers in a building owned and/or operated by J.V. Riverfront, Inc. d/b/a/ Tavern Restaurant (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 25 Mill Street, Springfield, MA.

B) Procedural History

By written notice dated 3-18-05, the Springfield Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 25 Mill Street, Springfield, MA. The appellant filed an appeal of said order on 4-12-05. The Board held a hearing relative to this appeal on 5-18-05, at the Department of Fire Services, Stow, Massachusetts.

The Appellant was represented by Frank L'Agostino, President, J.V. Riverfront Inc. d/b/a Tavern Restaurant and Attorney William G. Scibelli, Esquire. District Fire Chief John F. Cossaboom and Steven T. Desilets, Building Commissioner, appeared on behalf of the Springfield Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Edward G. McCann, Brian Gore, Chief Thomas Coulombe and Paul Donga. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Springfield Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Order of Notice
3. Notice of hearing to Fire Department
4. Notice of hearing to Appellant
5. Affidavit of Appellant
6. Photographs A-F
7. Floor Plan
8. Certificate of Inspection
9. Copy of newspaper article

E) Subsidiary Findings of Fact

- 1) By Notice dated 3-12-05 the Springfield Fire Department issued an order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 25 Mill Street, Springfield, MA. in accordance with the provisions of M.G.L. c. 148, s.26G ½. Said notice contained the statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, which requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 2) According to the building's Certificate of Inspection, dated 5-10-04, the establishment is a place of assembly classified as use group A-3 (780 CMR) with a total capacity of 138 persons. Of this amount, the capacity of the bar or lounge area is listed as 58 persons with the dining area capacity established at 80 persons. The establishment is on one floor. There is a wall and two doorway that separate the bar area from the restaurant area. Entrance to the bar area is made without the need to go through the dining room area. There is also a separate exit from the restaurant.
- 3) The Appellant contends that the establishment is principally used as a restaurant and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s.26G1/2. The establishment regularly and routinely serves meals on a daily basis. Full meals are routinely served in the "bar" area at the same time meals are served in the dining area. At

one time this bar area was the designated smoking area of the restaurant. At all hours of operation the kitchen is operational and food is served in all areas. Appellant contends that the establishment is perceived by its customers as a restaurant. A local newspaper review indicated that the establishment “pairs good food with a comfortable atmosphere to create a great dinning experience”.

- 4) On most occasions when there is entertainment it consists of a one-person karaoke singer and/or recorded music which is provided usually on Friday and Saturday nights in the bar area. There is no dance floor and the lights are not lowered when entertainment is provided. Occasionally there has been entertainment by a 3-piece orchestra. There is never a separate cover charge paid by customers to gain admittance. The music is not played above normal sound levels and is provided primarily for the pleasure of the dinner guests.
- 5) Based upon the occupancy load, the available floor area and the arrangement of tables and chairs, the occupant density is not considered dense or concentrated. The appellant by written stipulation indicated that the occupant density load is no less than 15 square feet per person. In all areas the tables and chairs are neatly arranged as to allow clear aisles and easy egress. The rated occupancy load and capacity of all areas allows for seating for all occupants without the need to stand up. Tables and chairs are never moved to allow an increase in occupant load. Based upon the physical configuration of the establishment, and seating arrangement the customer capacity in the bar area is not capable of expanding into the restaurant area. The only occasional time people are temporarily standing-up in the bar area is while waiting for a table.
- 6) The representatives of the fire department did not contest the factual characteristics of the building, including its use and description. Said representatives did not indicate that this establishment had a history of fire code violations or situations involving overcrowding.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2d paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part, states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004. Under the provisions of the new law (St.2004, ch.304 c,11) an owner is not required to submit plans and specifications for the installation of such sprinklers until 18 months of the effective date of the act (May 15, 2006) and is not required to complete the mandated sprinkler installation until November 15, 2006.
- 2) Pursuant to M.G.L. c. 148, s.26G1/2 and c. 6, s.201, whoever is aggrieved by an interpretation, order, requirement or direction of the head of the fire department may

appeal to this Board. Although the owner of a building subject to this particular law is not deemed in violation of the law until at least May 15, 2006, this Board has jurisdiction to hear this matter since the Appellant is aggrieved by the interpretation, order, requirement or direction of the head of the fire department which was issued on 3-18-05.

- 3) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 4) Although this building has a portion of it that is considered a “bar” or lounge area and provides a form of live entertainment several times per week, a detailed review of the current characteristics of the establishment indicates that it is currently used principally as a restaurant. A Building used principally as a restaurant is exempt from the sprinkler requirements of M.G.L. c.148, s.26G1/2 (4th paragraph).
- 5) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This statute was a portion of sweeping legislation filed as a result of a tragic Rhode Island nightclub fire which took place in February, 2003. In said document the Board noted that the statute did not define the meaning of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized (but not limited to) the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of an “A-2 like” occupancy which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code). This Board indicated that that it is these types of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It is noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building.

- 2) Based upon the testimony and documentation presented at the hearing this Board concludes that this establishment, as it is currently used, does not present such “A-2 like” characteristics as referenced in said Memorandum.
- a) There are no theatrical stage accessories other than raised platform;
 - b) There are no low lighting levels;
 - c) Although there is occasional entertainment by a live entertainer, the music, by its very nature, is for the entertainment of the diners and not for dancing purposes or for a viewing audience. The music is not played at above normal sound levels. There is no cover charge.
 - d) The “bar” lounge area and entertainment is not operated after later-than-average operating hours. Full meals are routinely served in the “bar” area at the same time meals are served in the dining area. At all hours of operation the kitchen is operational and food is served in all areas.
 - e) Tables and seating are not arranged or positioned so as to create ill-defined aisles and are never moved to allow an increase in occupant load. The bar area is not capable of expanding into the restaurant area.
 - f) There is no specific area designated for dancing;
 - g) Although there is portion of the establishment separated from the dining area that may be considered a bar for serving alcoholic beverages, full meals are routinely served in the said area. In addition, said bar portion has a capacity of less than 100 persons.
 - h) The occupant density is not considered dense or concentrated. The density load is not less than 15 square feet (net) per person. The Board notes that 780 CMR, The State Building Code (6th Edition) considers an occupancy “unconcentrated” if the occupancy load allows at least 15 (net) square feet per occupant . Additionally, the rated occupancy load and capacity of all areas allows seating for all occupants without the need to stand-up

G) Decision and Order

The Board hereby reverses the Order of the Springfield Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2, since the building, as used presently, is principally a restaurant. At present, the establishment does not feature the “A-2 like” characteristics that are typical of a nightclub, dance hall discotheque or bar or similar entertainment purpose. This determination is contingent upon the continued operation of the establishment in a manner consistent with the present characteristics found in section F-6.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Edward G. McCann	In Favor
Thomas Coulombe	Not In Favor
Brian Gore	In Favor
Brian Donga	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E., Chairman
Chairperson

Dated: June 28, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: William G. Scibelli, Esquire, Longmeadow Legal Associates, 916 Shaker Road, Longmeadow, MA. 01106-2416 **and** John F. Cossaboom, District Chief of Fire Prevention, Springfield Fire Department, 605 Worthington Street, Springfield, MA. 01105-1112